

April 20, 1999

D.T.E. 98-53

Petition of the Town of Plymouth to modify the tariffs of Boston Edison Company.

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D.T.E. 99-33

Petition of Boston Edison Company for arbitration of agreement for payments in lieu of taxes.

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Petitioner, D.T.E. 99-33

## **ORDER ON COMPREHENSIVE TAX AGREEMENT**

### **I. INTRODUCTION**

On May 26, 1998, the Town of Plymouth ("Plymouth") filed a Petition for review of Boston Edison Company's ("BECo" or "Company") transition charges with the Department of Telecommunications and Energy ("Department") pursuant to the Electric Restructuring Act ("Act"),<sup>(1)</sup> which states in pertinent part:

In the case of any nuclear-powered electric generation facility in the commonwealth which exceeds 250 megawatts in size and which was owned in whole or in part by an electric company as of July 1, 1997 ... such electric company ... in order to be eligible to collect the full amount of transition costs as approved by the department ..., shall enter into an agreement to pay the host community payments in addition to taxes.<sup>(2)</sup> Such payments in addition to taxes shall be made in equal payments ... by said electric company in the following amounts: for fiscal years 1999, 2000, and 2001 in an amount which equals the amount of tax payments remitted to such host community in fiscal year 1998. Such electric company shall, by the commencement of fiscal year 2002, have entered into an agreement to pay the host community payments in lieu of taxes for such generation facility; ... provided further, that such agreement shall cover a period of time the greater of which is the time until the licensed termination date of such facility, as included in the original license or in a renewal of such license, or 15 years beginning with fiscal year 1998. ...

G.L. c. 59, § 39H(c) (St. 1997, c. 164, § 71(c))

This matter was docketed as D.T.E. 98-53. The Department conducted a procedural conference between Plymouth and the Company on August 13, 1998.<sup>(3)</sup>

On March 15, 1999, Boston Edison filed a petition requesting the Department commence arbitration of this issue.<sup>(5)</sup> This matter was docketed as D.T.E. 99-33.

On March 16, 1999, Boston Edison and Plymouth entered into a comprehensive property tax agreement ("Agreement") that would resolve the Company's obligations under G.L. c. 59, § 38H(c).<sup>(6)</sup> On March 22, 1999, Boston Edison and Plymouth submitted a joint motion to (1) consolidate D.T.E. 98-53 and D.T.E. 99-33, (2) approve the Agreement in settlement thereof, and (3) dismiss the consolidated proceedings. The Department requested comments on the joint motion be filed no later than April 13, 1999, and no comments were submitted.

## II. COMPREHENSIVE PROPERTY TAX AGREEMENT

The Agreement, in general terms, provides for payments for the first four years at a level of payments equal to the taxes on Pilgrim at fiscal year 1998 levels, and a declining, negotiated level for the remaining years prescribed by the Act. The Agreement is conditioned on findings by the Department that (1) the Agreement constitutes an agreement with respect to property taxes which satisfies the requirements of G.L. c. 59, § 38H(c) with respect to agreements relating to property taxes, payments in addition to property taxes and payments in lieu of property taxes for the Pilgrim Nuclear Power Station and which is (i) sufficient to find Boston Edison to be eligible to collect the full amount of transition costs as approved by the Department pursuant to G.L. c. 164, § 1G, and (ii) sufficient to permit Boston Edison to securitize its transition costs, and (2) the amounts to be paid pursuant to the Agreement are transition costs recoverable from Boston Edison's retail customers under applicable laws and precedent, including G.L. c. 164, § 1G(b)(2)(ii) and the Department's Order in D.P.U./D.T.E. 96-23.<sup>(7)</sup>

## III. ANALYSIS AND FINDINGS

The Act permits recovery as transition costs of "any payments or payments in lieu of taxes made pursuant to section 38H of chapter 59." G.L. c. 164, § 1G(b)(2)(ii). In addition, Boston Edison's restructuring agreement, as approved by the Department in D.P.U./D.T.E. 96-23, specifically authorized the recovery in the Company's transition charge of payments in lieu of property taxes. Therefore, because the Agreement is consistent with the Act and the Company's restructuring settlement agreement, the amounts to be paid pursuant to the Agreement are transition costs recoverable from Boston Edison's retail customers under applicable laws and precedent, including G.L. c. 164, § 1G(b)(2)(ii) and the Department's Order in D.P.U./D.T.E. 96-23.

The Act provides for an agreement with the host community for payments in addition to taxes as a prerequisite for Boston Edison "to be eligible to collect the full amount of transition costs as approved by the Department pursuant to section 1G of chapter 164." G.L. c. 59, § 38H(c). In addition, the Act provides for an agreement for payments in lieu of taxes as a prerequisite, absent which the "[D]epartment shall not approve any plan submitted by such electric company to utilize the provisions of securitization pursuant to section 1H of chapter 164." Id. The Agreement constitutes an agreement with respect to property taxes which satisfies the requirements of G.L. c. 59, § 38H(c) with respect to agreements relating to property taxes, payments in addition to property taxes and payments in lieu of property taxes for the Pilgrim. Therefore, the Agreement is sufficient to (1) find Boston Edison to be eligible to collect the full amount of transition costs as approved by the Department pursuant to G.L. c. 164, § 1G, and (2) permit Boston Edison to securitize its transition costs. Accordingly, the Department grants the joint motion to (1) consolidate D.T.E. 98-53 and D.T.E. 99-33, (2) approve the Agreement in settlement thereof, and (3) dismiss the consolidated proceedings.

#### IV. ORDER

Accordingly, after due consideration, it is

ORDERED: That the amounts to be paid pursuant to the Agreement are transition costs recoverable from Boston Edison's retail customers; and it is

FURTHER ORDERED: That Boston Edison Company shall be eligible to collect the full amount of transition costs as approved by the Department; and it is

FURTHER ORDERED: That Boston Edison Company shall be permitted to securitize the transition costs as approved by the Department in its securitization Order, D.T.E. 98-118.

By Order of the Department

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

1. Plymouth also has filed the Petition pursuant to G.L. c. 164, §§ 93 and 94. Section 93 provides for an investigation either as to the quality or price of the gas or electricity sold or delivered on written complaint by, among others, the selectmen of a town where a gas or electric company is operated. Section 94 provides for the filing of the schedule of rates, and proposed changes to the filed schedule by gas or electric companies.
2. Plymouth is the host community for Boston Edison's Pilgrim nuclear generating facility ("Pilgrim").
3. On June 12, 1998, Plymouth filed a Motion for Partial Summary Judgment ("Motion") on factual and legal issues, and requested that the Department limit future proceedings to resolving issues related to remedies.<sup>(4)</sup>
4. Plymouth contends that the Company has not filed a timely responsive pleading, and that, in any event, there were no factual or legal defenses available to the Company (Motion at 1-2). -
5. The Act provides that "[i]n the event that an agreement on such payment in lieu of taxes cannot be effected through such good faith negotiations on or before January 1,

1999, the parties shall submit to arbitration ..." G.L. c. 59, § 39H(c), (St. 1997, c. 164, § 71(c)).

6. Boston Edison filed the Agreement in the proceeding to review its proposed securitization plan, D.T.E. 98-118. On April 2, 1999, the Department, noting the Agreement was conditioned on the Department's approval, approved the Company's securitization plan. Boston Edison Company, D.T.E. 98-118 (1999).

7. The Agreement is also conditioned upon the enactment into law of an amendment to G.L. c 59, § 38H(c) that such agreement is authorized, ratified, validated and confirmed in all respects as satisfying all of Boston Edison's requirements with respect to agreements relating to property taxes, payment in addition to property taxes and payments in lieu of property taxes for Pilgrim.